

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

WILLIAM STAPLES,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-711-D
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

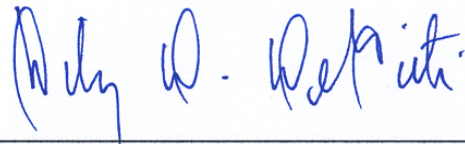
This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin pursuant to 28 U.S.C. § 636(b)(1)(B)-(C) on August 23, 2016. Upon initial screening of the Complaint pursuant to 28 U.S.C. § 1915A and § 1915(e)(2), Judge Erwin recommends that the case proceed only as a *Bivens*¹ action against Defendant Gonzales in his individual capacity, and only on a claim for damages allegedly caused by a violation of the Eighth Amendment.

Plaintiff has not filed a timely objection nor requested additional time to object, although he was expressly advised of the right to object, the deadline for objections, and the consequences of failing to object. Thus, the Court finds that Plaintiff has waived further review of the issues addressed in Judge Erwin's Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).

¹ *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 10] is ADOPTED. The action is DISMISSED WITHOUT PREJUDICE ² as to all parties and claims except a *Bivens* claim for damages against Defendant Gonzales. This case is re-referred to Judge Erwin for further proceedings consistent with the original case referral [Doc. No. 5].

IT IS SO ORDERED this 21st day of September, 2016.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

² A dismissal based on the federal government's sovereign immunity from suit is a dismissal for lack of subject matter jurisdiction and must be without prejudice to refiling, even if refiling would be futile. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006).